IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 2579 of 2004

Date of decision: 03.11.2006

Gobind Singh

..... Petitioner.

Versus

Central Bank of India and another

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. R.D. Yadav , Advocate
for the petitioner.

Mr. P.K. Dutt,Advocate
for respondent No.1.

P.S. PATWALIA, J. (ORAL)

By way of present revision petition the petitioner challenges order dated 29.11.2003 passed by the Executing Court whereby the execution petition was dismissed as being fully satisfied. The Central Bank of India was seeking to execute a decree of 1986. The decree was for recovery of a sum of Rs.24,300/- along with interest. This was the balance amount outstanding from a loan sanctioned by the respondent bank to Gobind Singh petitioner in this revision petition. One Sher Singh who was

arrayed as respondent No.2 in the execution petition was guarantor of Gobind Singh. The Executing Court has in the course of order noticed that the present execution was one of the oldest execution petitions pending in the Court and was classic and sad commentary on the point as to how a judgment debtor could obstruct the process of law and could frustrate the lawful decree passed by the Court of law by preferring false applications and taking false stand before the Court. This will be clear from the following facts recorded by the trial Court:-

> "8. The JD Gobind Singh in this regard also stated in writing that all his earlier applications be dismissed and that only this present application preferred today in the court be decided. In view of the aforesaid made by the JD Gobind Singh in writing, all his earlier application preferred by the JD Gobind Singh are hereby dismissed as withdrawn.
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> 9. It is also pertinent to mention here that the very fact that JD Gobind Singh has stated in the Court in writing today that all his earlier applications be dismissed in itself speaks volumes about the fact that the JD had been preferring the earlier applications by taking the false and frivolous pleas just an abuse of process of law.
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> ... 11. Firstly, the JD Gobind Singh has taken up the plea that he had offered the compromise on 6.10.2001 to the DH Bank in which he stated that he would pay the amount in between Rs.60,000/- to Rs.70,000/- to the DH till 31.12.2001 as full and final settlement and that he had already made a statement

to this effect in writing in the court on 20.10.2001. In his statement, recorded today in writing in the court also, the JD Gobind Singh has stated that the DH bank had admitted the aforesaid compromise but later on backed out of it.

12. In response to the specific question put up by this court in writing, the JD Gobind Singh replied that his compromise had been admitted by the DH Bank in reply to the application dated 11.3.2002 in para no.2 thereof.

13. The perusal of para no.2 of the reply of application dated 11.3.2002 shows that in the lien No.5th onwards thereof, it has been stated by the DH that the JD requested for settlement of the case for Rs.60,000/- on 6.10.2001 and the same was agreed to by the DH on 15.10.2001. The perusal of the order sheet of the judicial file clearly shows that no such compromise has been placed on the record of this file nor any such statement had been made by the DH that he had agreed to the settlement of the case for Rs.60,000/- as offered by the JD. Instead, the perusal of the interlocutory order dated 13.10.2001 shows that the learned counsel for the objector had stated that there were chances of the compromise with the bank and that the matter but put up before the Lok Adalat on 20.10.2001. Then the perusal of next interlocutory order dated 20.10.2001 shows that the JD had made a statement to the effect that there were chances of settlement and he would deposit the sum of Rs.17,000/- on

or before 23.10.2001 with the assurance to deposit the entire amount within one month, pursuant to which the matter was put off for 19.12.2001 for compromise by the learned Lok Adalat.

14. The perusal of next interlocutory order dated 19.12.2001 clearly shows that the counsel for the objector had stated that a sum of Rs.5000/- had already been deposited with the bank that the compromise had already been effected with the bank and that the bank had asked the objector to deposit the sum of Rs.60,000/- by 31.12.2001.

15. Admittedly, the JD has failed to place on the record of this file any such compromise which had allegedly been arrived at between him and the DH bank but even if we admit the statement made by the leaned Counsel for the objector as gospel truth to the effect that the compromise ha already been effected between the JD and the DH bank, according to which the JD had to deposit a sum of Rs.60,000/- to the DH bank by 31.12.2001, even then it does not help the case of the JD and rather completely shatters the whole edifice of the story put up by the JD because the JD admittedly failed to deposit the amount of Rs.60,000/- as per alleged compromise with the DH bank by 31.12.2001. Thus, the JD Gobind Singh himself being a defaulter is just estopped from the pleadings that he had deposited the amount of Rs.62,000/- in pursuance of the alleged

compromise as full and final settlement with the DH bank."

The Executing Court has also noted that auction proceedings were undertaken on 4.05.2002 in respect of land measuring 56 kanals 14 marlas and the same was to be confirmed. The Manager of the Bank stated before the Court that out of a total amount of Rs.1,30,000/- the JD has already deposited a sum of Rs.62,000/- and only a sum of Rs.68,000/- remain due. Therefore the Court confirmed the sale only to the extent of Rs.68,000/- and released the remaining land. This is clear from the following observations made by the trial Court:-

> " Though in the foregoing discussion, the Court has already held the auction proceedings dated 4.5.2002 in respect of the sale of 56 kanal 14 marla of land belonging to the JD No.2 by way of auction as perfectly legal and valid ones but still in view of the fact as stated by Sh. D.P. Dhanwal, the Manager of DH Bank today in writing in the Court, that out of the total decretal amount of Rs.1,30,000/- approximately due against the JDs till the present date, since, the JDs had already deposited the amount of Rs.62,000/- and now the amount of Rs.68,000/- approximately remains due against the JD Gobind Singh, so this Court is of the considered view that it would be in the interest of justice, if the sale of 56 kanal 14 marla of land by way of auction to the tune of Rs.1,50,000/- is confirmed only to the extent of Rs.68,000/- with the proportionate corresponding land which comes out to be 27 kanal of land thereby releasing the remaining 29 kanals of

land approximately, from the auction including the 16 kanals of land comprised in killa No. 13/5(8-0) 6(8-0) which had not been mortgaged by the JD No.2 with the DH bank.

23. For removal of doubts, it is hereby made clear that out of the 56 kanal 14 marla of land sold by way of auction of dint of auction proceedings dated 4.5.2002, the land measuring 16 kanal comprised in killa No. 13/5(8-0) 6(8-0) would be released from the attachment and sale with immediate effect as the aforesaid land had not been mortgaged by the JD No.2 with the DH bank whereas out of the remaining 40 kanal 14 marla of land sold by auction proceeding dated 4.5.2002, the land measuring 13 kanal approximately would also be released from attachment and sale as the remaining land measuring about 27 marla approximately sold by way of auction proceedings aforesaid corresponds to the amount of Rs.68,000/- which the plaintiff bank is entitled to recover till today from the JD. Therefore, an application dated 24.11.2003 for confirming the sale by way of auction earlier preferred by the DH bank in this regard also stands disposed of in terms of my aforesaid order."

On this basis the decree was held to be fully satisfied and the execution petition dismissed.

The only argument raised by learned counsel for the petitioner before me today is that he is now willing to pay the amount and settle the matter. I am of the opinion that there is no merit in this contention. The

petitioner had raised this argument so many times before the trial Court and never settled the amount and by now the sale has already been confirmed. Even the auction purchaser is not a party in this revision petition. The argument is therefore rejected.

For the reasons aforementioned I find no error in the order passed by the Executing Court and the present revision petition is therefore dismissed.

November 03 , 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**